IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE NINTH DAY OF FEBRUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE G. BIKSHAPATHY

And

THE HON'BLE MR JUSTICE P.S.NARAYANA

WRIT PETITION NO : 1320 of 2005

Between:

Y.A. Srinivas Rao, S/o. Sri Y. Achutarao, Deputy
Superintendent of Police, CID, Hyderabad, resident of Hyderabad.

..... PETITIONER

AND

1 The Government of Andhra Pradesh, rep by its Principal Secretary,
Home Department, Secretariat, Saifabad, Hyderabad.
2 The Commissioner of Police, Hyderabad - A.P.
3 The Deputy Commissioner of Police, North Zone, Secunderabad.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a writ, order or direction, more particularly one in the nature of Writ of Certiorari as under : a) call for the records relating to and connected with the judgment rendered on 23-11-2004 in O.A.No. 1143 of 2000 by the A.P. Administrative Tribunal, Hyderabad and quash or set aside holding the same as erroneous and unsustainable ; b) Also declare the action of the respondents in continuing the petitioner under continued harassment of fixing disciplinary proceedings pursuant to 1992 and contemplating to continue the departmental proceedings despite there is enormous delay as bad, illegal, irrational, abuse of power, colourable exercise of power, violative of principles of natural justice, denial of reasonable opportunity and contrary to the judgment of the Hon'ble Supreme Court and violative of Articles 14,

16 and 21 of the Constitution of India and consequently, (c) direct the respondents to drop the de novo enquiries with all consequential benefits such as promotion to the post of Additional Superintendent of Police at his turn etc, and pass such order or further orders.

Counsel for the Petitioner: MR.NOOTY RAMA MOHAN RAO

Counsel for the Respondents: GP FOR SERVICES I

The Court made the following:

ORAL ORDER: (per PSN.J.)

The writ petitioner Y.A. Srinivas Rao filed the present Writ Petition (a) to call for the records relating to and connected with the judgment rendered on 23-11-2004 in O.A.No. 1143 of 2000 by the A.P. Administrative Tribunal, Hyderabad, in short hereinafter referred to as Tribunal, and quash or set aside holding the same as erroneous and unsustainable ; b) Also declare the action of the respondents in continuing the petitioner under continued harassment of fixing disciplinary proceedings pursuant to 1992 and contemplating to continue the departmental proceedings despite there is enormous delay as bad, illegal, irrational, abuse of power, colourable exercise of power, violative of principles of natural justice, denial of reasonable opportunity and contrary to the judgment of the Hon'ble Supreme Court and violative of Articles 14, 16 and 21 of the Constitution of India and consequently, (c) direct the respondents to drop the de novo enquiries and consider consequential benefits such as promotion to the post of Additional Superintendent of Police at his turn etc., and pass such other suitable orders.

2. The writ petitioner was initially recruited as Sub-Inspector of Police by method of direct recruitment and joined in the post on 1.2.1974. While working as Sub-Inspector of Police, he was promoted as Inspector of Police on 1.2.1985 and further earned his promotion as Deputy Superintendent of Police on 27.6.2000 and he is otherwise qualified and suitable for being promoted to the post of Additional Superintendent of Police. It is also stated that the writ petitioner has been discharging his duties to the utmost satisfaction of his superiors. It is further stated that the writ petitioner earned about 7 rewards, i.e., 22 cash rewards, 45 good service entries and 2 commendations good during his service. It is further stated that while the writ petitioner was working as Inspector of Police at Lalaguda Police Station, through proceedings dated 4.5.1992, the 3rd respondent-Deputy

Commissioner of Police issued a charge memo containing a single charge, wherein it had been alleged that the writ petitioner was negligent in discharge of his duties in not attending the meeting in time and also attending without any preparation. It is no doubt stated that the said charge is baseless and unsubstantiated and trivial in nature. However, it had been indicated in the charge memo that as to why he should not be awarded postponement of increments for one year with effect of future increments and pension. Aggrieved by the said proceedings dated 4.5.1992 of the 3rd respondent, the writ petitioner preferred an appeal to the Director General and Inspector General of Police and the said appeal appears to have been forwarded to the 2nd respondent-The Commissioner of Police, A.P. Hyderabad, and the 2nd respondent was pleased to allow the appeal by setting aside the proceedings dated 3.8.1992 through his proceedings dated 1.7.1996. It is further stated that through proceedings dated 7.8.1996 a fresh charge memo had been issued by the 3rd respondent and in the said proceedings it had been ordered by the 3rd respondent that the writ petitioner should submit his explanation within ten days of the receipt of the charge memo. It is further stated that in pursuance of the charge memo dated 7.8.1996, the writ petitioner submitted a detailed representation to the 2nd respondent requesting the 2nd respondent to drop further action in this regard. In the said representation the writ petitioner also had categorically stated that after a long lapse of four years of the alleged incident, it will not be possible to continue the disciplinary proceedings and on that ground a request was made to the 2nd respondent to drop further action.

3. Several other factual details also had been narrated in paragraphs 4 to 8 of the affidavit and several grounds also had been raised in the present Writ Petition. In Ground (d) it was specifically stated that in any view of the matter, when once the Deputy Commissioner of Police, who is the 3rd respondent, is not competent to initiate any disciplinary action against the writ petitioner, any action taken thereon would render the impugned action as invalid. In the instant case the Deputy Commissioner of Police is not the appointing authority insofar as the Inspector cadre is concerned. When once he is not the competent authority any action taken by an incompetent authority is *per se* illegal, void and not in accordance with law. When once the disciplinary action initiated by the 3rd respondent is *per se* illegal, the consequential order and judgment of the Tribunal becomes untenable.

4. Specifically the provisions of Hyderabad City Police Act, 1348 Fasli had been referred to in Ground (c).

5. The Tribunal had dismissed the OA as aforesaid and aggrieved by the same, the present Writ Petition had been filed.

6. Mr.Nooty Rama Mohan Rao, learned counsel representing the writ petitioner had emphasized on the aspect of the competency and the jurisdiction of the 3rd respondent to initiate the disciplinary proceedings in the light of the provisions of Hyderabad City Police Act, 1348 Fasli. No doubt the learned counsel also had touched the other questions in respect of the factual controversy between the parties. However, the learned Government Pleader for Services-I had taken a stand that though in the course of correspondence this aspect had been raised, before the Tribunal, the same was neither pleaded nor a finding had been recorded in this regard.

7. Heard both the learned counsel and perused the impugned order.

8. It is no doubt true that in the correspondence, the writ petitioner had raised this aspect relating to the competency of the 3rd respondent in initiating the disciplinary proceedings in the light of the provisions of Hyderabad City Police Act, 1348 Fasli. It is also not in serious controversy that this ground was not specifically taken as a ground before the Tribunal nor the same had been argued, and it is needless to say that the Tribunal had recorded no finding since the contention had not been advanced at all before it. However, inasmuch as this is a pure question of law touching the very competency and the jurisdiction of the authority in initiating the disciplinary proceedings in the light of the statutory provisions aforesaid and in view of the fact that in the explanation to the charge sheet this aspect was raised and though this ground was not specifically raised before the Tribunal, it would be just and proper to consider this aspect, which is a pure question of law. In view of the same this Court is not inclined to touch the other factual controversy which had been pointed out by the learned counsel representing the parties.

9. In the light of the view which had been expressed supra, this Court is of the considered opinion that it would be just and proper to remit the matter to the Tribunal for fresh consideration especially in the light of the ground which had been urged before this Court referred to supra. Accordingly the impugned order is hereby set

aside and the matter is remitted to the Tribunal for fresh disposal in accordance with law.

10. The Writ Petition is allowed to the extent indicated above. There shall be no order as to costs.

G.BIKSHAPATHY, J.

9th February, 2005.

P.S.NARAYANA, J.

SSR

..... REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1 The Principal Secretary, Home Department, Government of Andhra Pradesh, Secretariat, Saifabad, Hyderabad.
2 The Commissioner of Police, Hyderabad - A.P.
3 The Deputy Commissioner of Police, North Zone, Secunderabad.

4 The Registrar, A.P. Administrative Tribunal, Hyderabad.

5 2 CCs to G.P. for Services-I, High Court of A.P. Hyderabad. (OUT)

6 2 CD copies.